IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 693 OF 2005

Mr. Rajkumar Banarsilal Singh ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Shri S.B. Keswani R. S. Bidkar for the Applicant.
Shri D.R.More, APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 16, 2005

PC :-

. Heard counsel for the parties.

2. The applicant has been arrested in connection with the C.R. No. 107/2004, registered with Anti Narcotics Cell. It is prosecution case that 4 kgs. of ganja was found inside the telephone booth, which was operated and in control of the applicant. The applicant was also found on the spot when the raid was conducted. Subsequently, it revealed to the raiding party that further quantity of ganja was found on the rooftop of the same telephone both. That quantity of ganja was also seized which weighed about 132 kgs. In other words, in all, 136 kgs of ganja has been

recovered during the raid. According to the applicant the quantity recovered from the rooftop of the booth cannot be said to be possessed by the applicant, as it was recovered from the open place and accessible to the other persons. This submission cannot be countenanced. It would have been different matter if no recovery had been made from the telephone booth of the applicant. In this case 4 kgs of ganja has been recovered from the telephone booth in control of the applicant. The applicant has been arrested on the spot. The recovery of 132 kgs. of ganja from the rooftop of the same telephone booth, therefore, will have to be presumed for the time being, traced to the applicant. Rest is a matter for trial.

3. It was next contended that although the recovery of 136 kgs of ganja has been made, however, the percentage of contraband noticed in respect of that quantity, does not exceed commercial quantity of ganja. This submission is canvassed, relying on the definition of ganja, as provided in section 2(b) of the Act. The said definition provides that, - ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they

may be known or designated. Reliance is then placed on the panchanama, which describes the seized item as red colour leaves, sticks and stems of the plant seized amongst other items. In the first place, it should be kept in mind that the total recovery of ganja is 136 kgs. Even though some seeds or stems have been found in the items as seized, and the same are to be excluded from the total seizure, it will definitely exceed 20 kgs. which is a commercial quantity provided for under the notification. To get over this position, reliance was placed on the certificate issued by the Directorate of Forensic Science Laboratories Maharashtra State, dated 4th November, 2004, at page 44 of the paper book, which mentions the percentage of active ingredient of the Narcotic Drug in the samples. Besides this certificate, it is necessary to advert to the certificate (at page 42 of the paper book), issued by the Assistant Chemical Analyser to Govt. Forensic Science Laboratory, Mumbai to the Anti Narcotics Cell on 4th November, 2004, which mentions that ganja is detected in all the samples, which were sent for analysis. As mentioned earlier, the applicant seeks to rely on the certificate issued by the Directorate of Forensic Science Laboratories at page 44 that the

percentage of active ingredient of the Narcotic Drug found in each of the samples has been specified under caption "Triangle 9 THC %" The same varies from 0.63 to 0.83 in the respective samples. The argument is that, even if the percentage is applied to the total recovery made, the total quantity of ganja will not exceed commercial quantity as it would come to only 969.2 grams. This submission is wholly misconceived. The certificate at page 44 only provides for the percentage of the active ingredient of the Narcotic Drugs in the samples. That does not mean that, that is the weight of the ganja which has been recovered during the raid. The ganja which has been recovered, according to the prosecution, is 136 kgs. If it is so, the rest is matter for the trial. I say so because nothing has been produced before me to support the submission that the description given in the certificate at page 44 will have to be taken as weight of ganja by itself. Viewed in this perspective, the argument that the total quantity of ganja recovered during the raid is much less than the commercial quantity, is devoid of merits.

4. As there is evidence on record to indicate the complicity of the applicant in the commission of the

crime, it is not possible for this court to hold that there are reasonable grounds to believe that the applicant is not guilty of the offence. If it is so, the bar under section 37 of the Act will come into play, for which reason this application will have to be rejected. Hence, rejected.

5. As the prayer for bail has been rejected, the trial court is directed to expedite the hearing of the case as per its turn under caption of "High Court expedited cases". Needless to observe that the trial court will decide the case on its own merits in accordance with law, uninfluenced by the observations made in this order or in the order of the lower court, rejecting the application.

6. Ordered accordingly.

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